

IN THE COURT OF CRIMINAL APPEALS OF TENNESSEE  
AT NASHVILLE

Assigned on Briefs December 18, 2007

**STATE OF TENNESSEE v. ADRAIN CHEIZ LEWIS**

**Direct Appeal from the Criminal Court for Davidson County**  
**No. 2006-A-75 Cheryl Blackburn, Judge**

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**No. M2007-00551-CCA-R3-CD - Filed February 6, 2008**

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The defendant, Adrain Cheiz Lewis, was convicted of one count of evading arrest and three counts of misdemeanor reckless endangerment. He was ordered to serve a total effective sentence of eight years, eleven months, and twenty-nine days in confinement. On appeal, the defendant argues that the trial court erred in imposing the maximum sentence of eight years for his evading arrest conviction contrary to the principles of sentencing as reflected in Tennessee's sentencing statutes. Upon review, we affirm the judgment of the trial court.

**Tenn. R. App. P. 3 Appeal as of Right; Judgment of the Criminal Court Affirmed**

J.C. McLIN, J., delivered the opinion of the court, in which THOMAS T. WOODALL and JOHN EVERETT WILLIAMS, JJ., joined.

Jeffrey A. DeVasher (on appeal) and J. Michael Engle (at trial), Assistant Public Defenders, Nashville, Tennessee, for the appellant, Adrain Cheiz Lewis.

Robert E. Cooper, Jr., Attorney General and Reporter; Elizabeth B. Marney, Assistant Attorney General; Victor S. Johnson III, District Attorney General; and Rob McGuire, Assistant District Attorney General, for the appellee, State of Tennessee.

**OPINION**

**FACTUAL BACKGROUND**

The defendant, along with other co-defendants, was charged with three counts of attempted first degree murder and one count of evading arrest while operating a motor vehicle. Prior to trial, the defendant pled guilty to the charge of evading arrest. Following a trial on the remaining counts, a jury found the defendant guilty of lesser-included offenses of misdemeanor reckless endangerment. A summary of the convicting evidence is set forth below:

On October 7, 2005, Officer Kevin Guyton of the Davidson County Police Department observed a white Cadillac with distinctive rims pull into a gas station parking lot on 28th Avenue North in Nashville. Two black males emerged from the Cadillac carrying handguns. The people loitering in the parking lot quickly dispersed. As Officer Guyton pulled into the parking lot, the Cadillac drove away at a high rate of speed. Officer Guyton did not pursue the Cadillac at this time. However, Officer Guyton was able to record and report the license plate number of the Cadillac. It was also noted in the report that the Cadillac did not match the vehicle's license plate number was registered to.

On October 8, 2005, Officer Ryan Perkins observed the white Cadillac and requested assistance from other police officers. As other officers arrived, the Cadillac accelerated suddenly away from the area, and multiple police officers in separate vehicles followed in pursuit. The Cadillac drove onto Interstate 40 Eastbound, then to Interstate 65 Northbound, and eventually drove onto Graycroft Road. The officers gave chase with their vehicle's lights and sirens on. It was estimated that the Cadillac reached speeds of over 100 miles per hour in traffic on the Interstate during the chase. Eventually, one of the Cadillac's tires blew out on Graycroft road and the Cadillac slowed to about thirty miles per hour. At this time, the Cadillac's passenger door flew open and a co-defendant jumped out of the car.

As Officer Perkins pursued the Cadillac on Graycroft Road, he heard gunshots. He then saw a revolver being thrown out of the Cadillac. He then heard more gunshots as the Cadillac careened down the road with one flat tire. The Cadillac eventually came to a stop, whereupon the defendant, who was driving the Cadillac, stuck his hands out of the window indicating he was going to surrender. Instead of surrendering, however, the defendant took off running for about one hundred and fifty yards before he was apprehended by the police. Another co-defendant was removed from the backseat of the Cadillac with a semi-automatic pistol. Shell casing recovered from the backseat matched the co-defendant's pistol. Based on this evidence, the jury found the defendant guilty of three counts of misdemeanor reckless endangerment.

A sentencing hearing was held on February 9, 2007. At the hearing, the defendant's mother, Carolyn Lewis, testified on the defendant's behalf. She said that the defendant had a place to stay upon his release from prison. She also said that she would help the defendant comply with the conditions of probation should the court grant an alternative sentence. On cross-examination, Ms. Lewis acknowledged that the defendant previously had been granted probation. The presentence report was admitted at the hearing along with a letter from the manager of Nashville Linen, stating that the defendant would be employed there full-time upon his release.

At the conclusion of the sentencing hearing, the trial court found the defendant to be a Range II, multiple offender. The trial court applied two enhancement factors: (1) the defendant had a previous history of criminal convictions or criminal behavior in addition to those necessary to establish the appropriate range; and (2) the defendant had failed to comply with the conditions of a sentence involving release into the community. *See* Tenn. Code Ann. § 40-35-114 (1), (8). The trial court then sentenced the defendant to eight years for his felony evading arrest conviction, and eleven

months, twenty-nine days for his misdemeanor reckless endangerment convictions. The court ordered the misdemeanor convictions to run concurrently to each other but consecutively to the defendant's felony conviction. In ordering consecutive sentencing, the court noted that the defendant had a long history of criminal conduct, and measures less restrictive than confinement had been unsuccessful.

## ANALYSIS

As his sole issue on appeal, the defendant argues that his eight-year sentence for his conviction for evading arrest is excessive. Although the defendant acknowledges the enhancement factors found in his case were applicable, he nevertheless points to statistical data provided by the Tennessee Administrative Office of the Courts to argue that his sentence of eight years is excessive when compared to the average sentence length imposed by courts in the years 2000-2006 for the same felony classification and offender status. Accordingly, the defendant submits that his sentence is greater than that deserved for the offense committed and not the least severe measure necessary to achieve the purpose for which the sentence was imposed.

When sentencing a convicted defendant, a trial court shall consider: (1) the evidence, if any, received at the trial and the sentencing hearing; (2) the presentence report; (3) the principles of sentencing and arguments as to sentencing alternatives; (4) the nature and characteristics of the criminal conduct involved; (5) evidence and information offered by the parties on the enhancement and mitigating factors set forth in Tennessee Code Annotated sections 40-35-113 and 40-35-114; (6) any statistical information provided by the Administrative Office of the Courts as to Tennessee sentencing practices for similar offenses; and (7) any statement the defendant wishes to make in the defendant's own behalf about sentencing. Tenn. Code Ann. § 40-35-210(b); *see State v. Imfeld*, 70 S.W.3d 698, 704 (Tenn. 2002). When imposing a specific sentence within the range of punishment, a court shall consider, but is not bound by certain advisory guidelines, including the presence or absence of enhancement factors. *Id.* § 40-35-210(c).

Upon a challenge to the sentence imposed, this appellate court conducts a de novo review of the record with a presumption that the trial court's sentencing determinations are correct. Tenn. Code Ann. § 40-35-401. This presumption of correctness is conditioned upon the affirmative showing in the record that the trial court considered the sentencing principles and all relevant facts and circumstances. *State v. Pettus*, 986 S.W.2d 540, 543-44 (Tenn. 1999). However, if the record shows that the trial court failed to consider the sentencing principles and all relevant facts and circumstances, then review of the challenged sentence is purely de novo without the presumption of correctness. *State v. Ashby*, 823 S.W.2d 166, 169 (Tenn. 1991). On appeal, the party challenging the sentence imposed by the trial court has the burden of establishing that the sentence is erroneous. Tenn. Code Ann. § 40-35-401, Sentencing Commission Comments. We will uphold the sentence imposed by the trial court if (1) the sentence complies with our sentencing statutes, and (2) the trial court's findings are adequately supported by the record. *See State v. Arnett*, 49 S.W.3d 250, 257 (Tenn. 2001).

Upon review, we note that the defendant's conviction for evading arrest is a Class D felony, and as a Range II, multiple offender, he was subject to a sentence range of four to eight years. *See* Tenn. Code Ann. § 40-35-112. The offense occurred in October of 2005, and therefore, the defendant was properly sentenced under the 2005 amendment to the Sentencing Act effective for all offenses occurring after June 6, 2005. *See generally id.* § 40-35-210.

As previously noted, the defendant concedes that the enhancement factors found by the trial court were applicable to his sentence. His primary complaint involves the court's failure to consider certain statistics which allegedly represent the "mean" sentence length for Range II offenders convicted of Class D felonies. According to the defendant, the "mean" sentence length as reported by the Tennessee Administrative Office of the Courts for his felony offense and his classification was between 59.8 months and 66.4 months for the years 2000-2006.<sup>1</sup> Therefore, the court imposed a disparate sentence of 96 months given the statistical information regarding the average length of the sentence.

Addressing the defendant's argument, we would first point out that the record does not indicate that the defendant submitted any statistical data regarding his sentence to the trial court for consideration. Generally, a criminal defendant who fails to take whatever action reasonably available to prevent a possible error cannot later claim error on appeal and expect relief. *See* Tenn. R. App. P. 36(a). Furthermore, our Sentencing Act clearly gives a trial court wide latitude in determining an appropriate sentence so long as the court complies with the purposes and principles of the Act and its findings are adequately supported by the record. Here, the record supports the court's sentencing decision. The defendant engaged in extremely dangerous behavior as he led police officers on a high speed chase through Davidson County. He had a rather lengthy criminal history, and he failed to comply with the conditions of a sentence involving release into the community. Because the trial court complied with the statutory sentencing procedure, and its findings are supported by the record, the sentence cannot be disturbed on appeal. *See State v. Ross*, 49 S.W.3d 833, 847 (Tenn. 2001). Accordingly, the defendant is not entitled to relief on this issue.

## CONCLUSION

Based upon the foregoing review, the judgment of the trial court is affirmed.

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J.C. McLIN, JUDGE

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<sup>1</sup> In his appellate brief, the defendant cites to statistical information found in Sentencing Practices in Tennessee, a publication prepared by the Tennessee Administrative Office of the Courts.